

LAW & ACCOUNTING

Employers need to provide anti-harassment training



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It is the law of employment discrimination in Pennsylvania that an employer will be liable for the harassing conduct of an employee if the employer was negligent in failing to:

- (1.) Train;
- (2.) Discipline; or
- (3.) Fire the harassing employee, or
- (4.) If the employer failed to take

prompt and effective remedial action to end the harassment upon learning of it.

I propose in this column to discuss the first of these reasons to hold an employer legally responsible for an employee's misconduct — the failure to train.

One of the most remarkable developments in the law of employment discrimination in this decade has been the consistent finding of judges and juries that an employer's inaction regarding training shows willful disregard for the law and is the basis not just for finding employers liable for employee misconduct, but also the basis for awarding punitive damages to the victim of

unlawful employment discrimination.

Those findings are mirrored in enforcement guidance published by the Equal Employment Opportunity Commission, which warns employers to provide training to all employees to ensure that they understand their rights and responsibilities under the laws prohibiting harassment.

Yet many employers still fail to teach their employees what is harassing conduct, how to avoid committing it, and what to do if employees observe it.

To be sure, most employers possess and distribute equal employment opportunity and anti-harassment written policies to their employees. But those same employers often do not train their employees to understand and work in compliance with those policies, leaving those employers vulnerable to liability for failing to properly train their employees.

Training employees to comply with anti-harassment and equal employment opportunity policies should be inexpensive, informative and easily accomplished. An important way to begin preparing to conduct such training is to review the employer's written employment policies with a knowledgeable employment law attorney or human resources professional. The reviewing professional should ensure that the poli-

cies satisfy legal requirements and explain in clear language what the policies mean and how to adhere to them.

The next step in preparing to conduct anti-harassment training is to decide who will conduct the training. The trainer should be someone who has experience conducting training, and experience explaining the law of harassment, employment discrimination and best practices to comply with legal requirements. The trainer should be able to draw upon his or her own experience advising employers on how to avoid and resolve potential employment discrimination claims before they ripen into confrontation and litigation.

A final step in preparing to conduct anti-harassment training is to select a location, date and time to conduct the training. Employees should be able to find the training site with ease, and spend the minimum time away from productive employment that is necessary to accomplish the purposes of the training.

The training itself should include a Power Point presentation of essential information that the trainer needs to convey to his or her audience, including legal requirements, identifying unwelcome conduct, tools to change conduct, elements of the employer's written policies on equal employment opportunity, and how to report workplace concerns.

The training should also focus on improving workplace relations and not simply constraint and prohibition.

The precise content of the training may vary with the audience. What production employees need to know may not be the same as what supervisors need to learn and understand. Managers in particular need to learn how to respond to complaints of discrimination and harassment. Their prompt and effective response to a complaint of unlawful discrimination may limit or eliminate corporate liability altogether.

The training of an employee group ought to be accomplished in about one hour, and end with employees' written acknowledgment of attendance at the training.

Effective training is an important tool that employers must use to combat unlawful employment discrimination. Of course, training alone will not insulate an employer from legal jeopardy. An employer also needs to know what constitutes a successful investigation of a complaint of employment discrimination, and how to take prompt and effective action to resolve such a claim.

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